

FILED

MAY 4 - 2006

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:) Chapter 7
)
SETH LEE SERAPHI aka SCOTT LEE) Nu. 4-06-00383-EWH
SHIRE,)
Debtor.) **ORDER GRANTING DEBTOR'S
REQUEST FOR A DETERMINATION OF
EXIGENT CIRCUMSTANCES**

On April 25, 2006, an order was entered denying the Debtor's request for a waiver, pursuant to 11 U.S.C. § 109(h)(4), of the § 109(h)(1) requirement that the Debtor obtain credit counseling prior to the filing of his petition. The request for a waiver was denied because the Debtor, even though he is incarcerated and, therefore, without access to a telephone or a computer with internet capability, is nevertheless not impaired or disabled as those terms are defined in § 109(h)(4).

On May 2, 2006, the Debtor filed a motion for reconsideration in which he states that he has only recently been informed by prison authorities that if this court issues an order requiring it, he will be permitted to obtain access to a telephone so that he can complete both the credit counseling requirements of 11 U.S.C. § 109(h)(1) and the personal and financial management course required prior to discharge pursuant to 11 U.S.C. § 727(a)(11).

The court interprets the Debtor's motion for reconsideration to be a request for a determination of exigent circumstances under § 109(h)(3)(A) which, if granted, would permit a waiver of the requirement that he file a credit counseling certificate demonstrating that he received

1 approved credit counseling services prior to the filing of his petition. If an exigent circumstances
2 determination is made, then under § 109(h)(3)(B), the Debtor has 30 days from his petition date to
3 file the required credit counseling certificate. The court may, for cause, grant an additional 15 days
4 for the Debtor to file the credit counseling certificate.
5

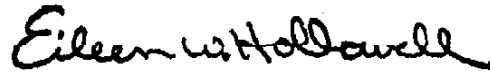
6 The Debtor's application for a waiver of the credit counseling requirement describes exigent
7 circumstances----- the Debtor's incarceration. The Debtor, therefore, meets the first requirement
8 for a waiver under § 109(h)(3)(A)(1)(i). The second requirement for an exigent circumstances
9 determination is that the Debtor certify that in the five-day period prior to filing his petition, he
10 requested, but was unable to obtain, credit counseling from an approved credit counseling agency.
11 Because the Debtor was incarcerated and because his motion for reconsideration indicates that he
12 could not obtain the right to request credit counseling services by phone or by Internet, unless this
13 court issued an order directing the prison authorities to provide him with such access, it was literally
14 impossible for the Debtor to obtain credit counseling services before he filed his petition.
15 Accordingly, the court finds that the requirement of § 109(h)(3)(A)(ii) are inapplicable to this
16 Debtor. The third requirement for a determination of exigent circumstances is that the Debtor's
17 explanation be satisfactory to the court. The court finds that, in these circumstances, the Debtor's
18 explanation is satisfactory. The Debtor's Motion for Reconsideration and defacto Request for a
19 Determination that Exigent Circumstances exist is, therefore, GRANTED.
20
21

22
23 IT IS FURTHER ORDERED:

- 24 A. Requiring the Arizona Department of Corrections to allow the Debtor the use of a
25 telephone or Internet services so that he can obtain a credit counseling certificate and
26 a certificate demonstrating that he has completed a personal financial management
27 course;
28

1 B. Extending the time for the Debtor to complete the credit counseling requirement of
2 11 U.S.C. § 109(h)(1) until 45 days after his petition date as permitted under
3 § 109(h)(3)(B) or by no later than May 30, 2006.

4 Dated this 4th day of May, 2006.

5 

6
7 Eileen W. Hollowell
U.S. Bankruptcy Judge

8 Copy of the foregoing mailed this
9 4th day of May, 2006, to:

10 ASPC-Eyman/Cook Unit
11 Seth Lee Seraph aka Scott Lee Shire
12 ADC#132055 / Bed #1-C-29
13 PO Box 3200
Florence, AZ 85232

14 ASPC-Eyman/Cook Unit
15 Attention: CO III Pogue
16 P.O. Box 3200
Florence, AZ 85232

17 Ronald Ancell, Trustee
18 1721 West Klamath Drive
Tucson, AZ 85704

19 U.S. Trustee's Office
20 230 North First Ave. #204
Phoenix, AZ 85003

21 By 
22 Judicial Assistant